910 KAR 2:030. Accounting provisions for adult guardianship.

RELATES TO: KRS 210.290(3), (4), 387.500-387.990, 42 C.F.R. 483.10, 42 U.S.C. 1320b-20

STATUTORY AUTHORITY: KRS 387.600(1), 194A.050(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 387.600(1) authorizes the Cabinet for Health and Family Services to be appointed as limited guardian, guardian, limited conservator, or conservator to conduct an active guardianship or conservatorship program. KRS 194A.050(1) requires the secretary of the cabinet to promulgate administrative regulations necessary under applicable state laws to protect, develop, and maintain the health, personal dignity, integrity, and sufficiency of the individual citizens of the commonwealth. This administrative regulation establishes accounting provisions for adult guardianship.

Section 1. Definitions. (1) "Best interest" means a course of action that maximizes what is best for a ward and that includes consideration of the least intrusive, most normalizing, and least restrictive course of action possible given the needs of a ward.

(2) "Budget" means a financial spending plan that estimates revenues and expenditures of an individual for a stated period of time by examining and analyzing available financial information.

(3) "Division" means the Division of Guardianship.

(4) "Emergency" means unexpected expenses such as:

(a) Medical needs not paid by Medicare or Medicaid;

(b) Home repair; or

(c) Transportation for a medical appointment.

(5) "Fiduciary Services Branch" means a central office branch under the Division of Guardianship.

(6) "Field Services Branch" means a central office branch under the Division of Guardianship.

(7) "Order of appointment" means a type of guardianship appointment pursuant to KRS 387.590(6).

(8) "Ordinary and necessary expenses" means those expenses that are requested by a Field Services worker to maintain a client's quality of life such as clothing, snacks, and non-medical transportation.

(9) "Personal needs" means an individual's need to purchase varied goods such as:

(a) Clothing;

(b) Personal care items; or

(c) Social support items such as:

1. Telephone;

2. Stationery;

3. Books;

4. Snacks; or

5. Occasional outings.

(10) "Personal spending accounts" is defined by 42 C.F.R. 483.10.

(11) "Provider" means a facility or entity providing services for a ward such as:

(a) Self;

(b) Caretaker;

(c) Family,

(d) Group home placement;

(e) Hospital; or

(f) Psychiatric hospital.

(12) "Ward" is defined by KRS 387.510(15).

(13) "Work allowance" means a portion of a ward's wage check sent to the ward to use for personal spending.

Section 2. Budget. (1) Within thirty (30) working days of placement, the division shall complete a budget process for a ward.

(2) The budget process shall include:

(a) The ward's monthly income and expenses;

(b) Other expenses of the ward that are on a monthly basis to calculate a monthly amount;

(c) The ward's net amount; and

(d) Transfer of the completed budget to the Fiduciary Services Branch for implementation.

Section 3. Work Allowances. The Field Services Branch shall complete a budget for a ward based on individual needs, taking into account Social Security Administration work incentive rules, 42 U.S.C. 1320b-20.

Section 4. Quarterly Reports and Personal Spending Accounts. (1)(a) On quarterly basis, 42 C.F.R. 483.10 and 907 KAR 1:145 require an accounting report of a ward's personal needs income and expenses for Long Term Care and Supports for Community Living (SCL) providers.

(b) The maximum allowable balance to be held in a personal spending account shall be $100.

(2) The division shall review the ward's account for a discrepancy and to ensure:

(a) The accounting report includes all personal needs income received on behalf of the ward;

(b) Receipts are attached to the accounting report including special requests that may have been initiated by the provider such as:

1. Clothing;

2. Furniture; and

3. Electronics;

(c) All personal needs expenditures incurred for that ward are ordinary and necessary; and

(d) The balance does not exceed $100.

(3) If no discrepancies are found, the Field Services Branch shall:

(a) Ensure balance is in compliance and appropriate backup receipts are attached to the accounting report; and

(b) Sign, date, and write "approved" on the accounting report.

(4) If a discrepancy is found, the Field Services Branch shall:

(a) Sign, date, and write disapproved on the accounting report with the reason the statement is not approved; and

(b) Contact the provider to resolve the issue.

(5) Upon completion, the Field Services Branch shall mail the review to the Fiduciary Services Branch for final review and processing.

(6) The Field Services Branch shall notify the Fiduciary Services Branch to request a refund, modify the amount, suspend, or resume the disbursement of personal needs funds for the ward as necessary.

(7) If the Field Services Branch indicates a refund is appropriate, the Fiduciary Services Branch shall generate a letter to the provider asking that any funds over $100 be refunded to the cabinet for the ward by the end of the month.

Section 5. Negotiable Checks. (1) The Field Services Branch shall promptly forward all checks and money orders received on behalf of a ward to the Fiduciary Services Branch by certified mail.

(2) Any cash received on behalf of a ward shall be converted to a money order by the Field Services Branch and forwarded to the Fiduciary Services Branch as specified in subsection (1) of this section.

(3) Each field services office shall have and maintain a tracking system for cash and checks received on behalf of a ward.

Section 6. Personal Checking Accounts of a Ward. (1) Establishment of a checking account for a ward shall be at the direction of the court.

(2) The Field Services Branch shall ensure that the facility where the ward resides is aware that:

(a) An individual savings or checking account shall not be established for the ward unless the account is listed in the provider's name for the benefit of the ward; and

(b) The ward shall not legally write or endorse checks from this account unless directed by the court.

Section 7. Checks Sent to a Ward as Payee. (1) The Field Services Branch shall ensure that a ward of the cabinet does not receive or endorse checks made payable directly to the ward unless:

(a) The court has directed that the ward may receive and endorse checks; or

(b) The order of appointment is for a limited type of appointment that does not specify that the ward cannot execute instruments or enter into a contractual relationship.

(2) Unless the ward can endorse a check through an AOC-775, Order of Appointment of Guardianship that is issued by the Administrative Office of the Court and available at www.courts.ky.gov, the division shall ensure that no payment requests with the ward as payee is made.

Section 8. Requests for Payments and Supporting Documentation. A ward's expenses shall be paid through a payment request system that has been developed by the Fiduciary Services Branch to meet accounting internal control best practice and reporting required by the courts.

Section 9. Medical Payments and Medical Spend Downs, Pharmacy and Health Insurance Premium Payments. (1) For a ward's expenses such as medical, medical spend down, pharmacy and health insurance premium payments, the Field Services Branch shall forward an expense statement to the Fiduciary Services Branch for review and payment.

(2) The Field Services Branch shall submit to the Fiduciary Services Branch a request for medical expenses not reimbursable or covered by insurance such as:

(a) Glasses;

(b) Diabetic shoes; or

(c) Dental services.

Section 10. Provider Payments. (1) The Field Services Branch shall:

(a) Review a provider statement received; and

(b) Ensure that the provider statement does not include inappropriate expenses such as medical, medical co-payments, pharmacy charges, or personal needs unless these expenses had been pre-approved by the Field Services Branch.

(2) After reviewing a statement for a provider payment, the Field Services Branch shall for-

ward the statement on behalf of a ward to the Fiduciary Services Branch for review and payment.

Section 11. General Expenses. (1) General expense payments may include:
(a) Additional personal needs such as:
1. Birthday;
2. Christmas; and
3. Change in seasonal needs; and
(b) Other items such as:
1. Furniture;
2. Vacation;
3. Outing;
4. Utilities;
5. Cable television; and
6. Household item.
(2) For all general expense statements, the Field Services Branch shall analyze the request or statement to ensure:
(a) It is an expense of the ward;
(b) The expense is in the best interest of the ward; and
(c) The expense reflects what was requested by the ward through:
1. Self;
2. Case manager of the ward; or
3. The Field Services Branch.
(3)(a) Extra personal needs shall be personal needs that exceed the budgeted or regulatory personal needs such as for Personal Care in accordance with 921 KAR 2:015 and Long Term Care facilities already being sent on a monthly basis in accordance with 907 KAR 1:655.
(b) The Field Services Branch may request the extra personal needs specified in paragraph (a) of this subsection at any time.
(c) The Field Services Branch shall follow the procedures for requests for payment and supporting documentation in accordance with Section 8 of this administrative regulation.
(4) The Fiduciary Services Branch shall review and approve any payment request exceeding $500 dollars or over.
(5) The Fiduciary Services Branch shall approve or disapprove a payment request based on:
(a) If funding is available; and
(b) If the back-up documentation supporting the request indicates that the expense is ordinary and necessary.

Section 12. Burial Policies and Related Issues. (1) If funds are available beyond providing for the ward’s needs, the Field Services Branch shall establish preneed burial arrangements for the ward.
(2) Prior to purchasing a burial policy or making any other funeral arrangements, the Field Services Branch shall:
(a) Confirm that funds in the ward’s account are available for burial by contacting Fiduciary Services;
(b) Take into consideration a ward’s desires and cultural and religious views;
(c) Review a ward’s records to:
1. Assess what burial policies or arrangements have previously been acquired;
2. Ensure the use of the same funeral home;

3. Determine the value of an existing policy so the total value does not exceed Medicaid and Social Security Administration (SSA) standards; and

4. Review the adequacy of the arrangements, and if the arrangements are not adequate verify with the Fiduciary Services Branch that the ward has funds available to:

a. Add to the burial policy;

b. Procure a monument or plot; or

c. Make any other necessary burial arrangements;

(d) Determine that all needs of the ward are being met and that a minimum of fifty (50) dollars in the ward's account is available for an emergency; and

(e) Review the ward's accounts to ensure bills have been paid.

(3) The Field Services Branch may discuss with the ward, relative, or other individual with knowledge of the client's wishes concerning burial arrangements.

(4) If the Field Services Branch is unable to obtain information regarding a burial preference from the ward, relative, or other individual with knowledge of the client's wishes, the Field Services Branch shall:

(a) Examine the ward's record for information pertaining to burial; and

(b) Decide the location for the burial and the funeral director who will handle the arrangements.

(5) If purchasing a burial contract, the Field Services Branch shall:

(a) Contact a funeral director to initiate the process of establishing a burial contract;

(b) Submit the contract to the Fiduciary Services Branch to ensure that the contract meets Medicaid and SSA standards;

(c) Upon receipt of a check from the Fiduciary Services Branch, forward the check and contract signed by the Field Services Branch on behalf of the ward, to the funeral home; and

(d) Send a copy of the signed and completed contract to the Fiduciary Services Branch.

(6) If a ward has lost any body part due to amputation or surgery and it is appropriate to bury this body part with the ward, arrangements shall be made by the Field Services Branch with the funeral home selected to ensure the body part is preserved for burial with the ward's body at the time of death.910 KAR 2:030 Accounting Provisions for Adult Guardianship. (35 Ky.R. 1976; 2117; 2288; eff. 5-1-2009.)